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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91222833
Party	Defendant Damiani, Joseph L.
Correspondence Address	SCOTT H KALIKO KALIKO & ASSOCIATES, LLC 883 HILLTOP TERR FRANKLIN LAKES, NJ 07417 UNITED STATES skaliko@kalikolaw.com
Submission	Other Motions/Papers
Filer's Name	Scott H. Kaliko
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Signature	/Scott H Kaliko/
Date	09/23/2015
Attachments	Letter to B_McDonald Avido.pdf(500521 bytes )



VIA Electronic Mail bmcdonald@sgrlaw.com

Bruce A. McDonald, Esq. Smith, Gambrell & Russell, LLP Suite 400 1055nThomas Jefferson Street, NW Washington, DC 20007

Re: Avido, LLC v. Joseph L. Damiani, Opposition No. 9122833 (TTAB)

Dear Mr. McDonald:

Scott H. Kaliko

T. 201-739-5555

F. 201-644-0039

SKaliko@kalikolaw.com

Kaliko & Associates, LLC

Franklin Lakes. NJ 07417

883 Hilltop Terrace

I am in receipt of your letter of September 22, 2015. Pursuant to *Fed. R. Civ. P* 37, neither you nor did your client meet or confer with my me or my office before filing your Motion for a 30-day extension of the trial calendar. Nevertheless, my client does not object to your Motion.

Next, we strongly disagree with your your demand of September 22, 2015, that we withdraw our Initial Disclosures filed by my office on September 19, 2015, because such Initial Disclosures contained confidential information. Specifically, the Initial Disclosures contained no designated confidential or personal identifiable information (PII). The telephone number of Mrs. Lance was voluntarily provided by Mrs. Lance to my office as the contact number contained within a demand letter sent to my office that my client withdraw their Untitled States Trademark Application. Serial No. 864817523. *See* Email of Avido, LLC. Accordingly, we reject your assertion that our office conducted itself in an improper manner.

Should you have any questions, feel free to contact me.

Very truly your,

Scott H. Kaliko

Kaliko & Associates, LLC

Copy to: Joseph L. Damiani



Dear Mr. Kaliko,

As a follow-up to our call earlier today regarding the trademark application for "Avido" you filed December 16, 2014 on behalf of Joseph Damiani, we wanted to let you know that our company, Avido, LLC has been using the "Avido" mark nationally since May 5, 2014 in the consumer electronics field, selling online through retailer Amazon.com. If you use a search engine and search "Avido," you will see that we consistently appear within the first pages of the results. Because your client has applied to register an identical mark for related Class 9 goods, we are concerned about the likelihood of confusion.

We recently filed an application for the "Avido" mark in Class 9 covering a variety of mobile accessories (U.S. Ser. 86490504). The "Avido" mark is very important for us; it is our company name and used on all of our products.

The identification of goods in your client's application is broadly worded and appears to encompass goods that are highly related to those offered by our company. Your client's application is based on use, however, when reviewing the evidence of use that was filed, it appears to be a screenshot from an inactive website. The screenshot references software related to exercise. Notably, when you search "Avido exercise" using Google, our company's products are the first search results. We cannot have other companies using our company name and mark for related goods and services, and thus we do not believe co-existence is possible.

Because we filed our application after Mr. Damiani's, it is likely our application will be refused because of your client's application. I am hoping your client will consider abandoning the application and stop using the mark, if he is doing so at all. If your client's application is published, we will have no choice but to oppose.

I am hoping we can resolve this satisfactorily. I can be reached by return email, or my cell, 443-745-1714. We look forward to hearing from you. Thank you.

Wendy Lance info@avidopower.com

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